



DEPARTMENT OF COMMERCE

International Trade Administration

[C-552-826]

Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with the Final Determination of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 27, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *Wind Tower Trade Coalition v. United States*, Court No. 20-03692, sustaining the U.S. Department of Commerce's (Commerce) final results of redetermination pertaining to the countervailing duty (CVD) investigation of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam) covering the period of investigation January 1, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation.

DATES: Applicable April 27, 2023.

FOR FURTHER INFORMATION CONTACT: Carolyn Adie or Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6250 or (202) 482-4880, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2020, Commerce published its *Final Determination* in the CVD investigation of wind towers from Vietnam.¹ Commerce calculated a final subsidy rate for the mandatory

¹ See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstance*, 85 FR 40229 (July 6, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum.

respondent, CS Wind Vietnam Co., Ltd. (a.k.a. CS Wind Tower Co., Ltd.) (CS Wind Vietnam), and assigned the subsidy rate calculated for CS Wind Vietnam as the all-others rate.² Commerce subsequently published the CVD order on wind towers from Vietnam.³

The Wind Tower Trade Coalition appealed Commerce's *Final Determination*. On March 24, 2022, the CIT remanded the *Final Determination* to Commerce, instructing Commerce to: (1) discuss and address certain evidence and arguments that the Wind Tower Trade Coalition raised pertaining to potential manipulation; and (2) substantiate its conclusion as to the import status of certain steel plate in light of evidence that detracts from its conclusions, and to further explain its subsidy calculations for the Import Duty Exemptions program.⁴

In its final results of redetermination, issued on July 21, 2022, Commerce provided further explanation and analysis of the evidence and arguments presented by the Wind Tower Trade Coalition concerning manipulation, and provided further explanation to substantiate our finding that certain steel plate imports were sourced from within Vietnam, rather than imported. Based on the results of these analyses, the CVD rates calculated in the *Final Determination* remain unchanged.⁵ The CIT sustained Commerce's final results of redetermination.⁶

Timken Notice

In its decision in *Timken*,⁷ as clarified by *Diamond Sawblades*,⁸ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 27, 2023, judgment constitutes a final decision of

² *Id.*

³ See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders*, 85 FR 52543 (August 26, 2020).

⁴ See *Wind Tower Trade Coalition v. United States*, Court No. 20-03692, Slip. Op. 22-27 (CIT March 24, 2022).

⁵ See *Final Results of Redetermination Pursuant to Court Remand, Wind Tower Trade Coalition v. United States*, Court No. 20-03692, Slip. Op. 22-27 (CIT March 24, 2022), dated July 21, 2022, available at <https://access.trade.gov/resources/remands/index.html>.

⁶ See *Wind Tower Trade Coalition v. United States*, Slip. Op. 23-63 (CIT April 27, 2023).

⁷ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁸ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 8, 2023.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

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